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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,838	10/26/2001	Barbara J. Bolle	98-1130CON	5054

7590 12/31/2002

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EXAMINER
FULTON, CHRISTOPHER W

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/014,838	BOLLE, BARBARA J.	
	Examiner	Art Unit	
	Christopher W. Fulton	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: In the specification at page 1 line 1 the status of the parent application needs to be updated.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 4, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Marcussen.

The device as claimed is substantially disclosed by Carr with a device having a scale that extends from the bottom of the inside of a bottle to measure the amount of liquid in the bottle, but lacks the gauge body having a bottom that corresponds to the bottom of the bottle, the edge of the device being shaped the same as the bottle with a corresponding scale to determine the amount of liquid in a specialty shaped bottle, and a plurality of devices for different shaped bottles.

Marcussen teaches using a hand held gauge that is place along the side of a bottle and does not support the bottle to provide a quick and accurate measurement of the bottles contents

without moving the bottle to place it on a gauge. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the gauge of Carr a hand held gauge to be placed along the side of the bottle as taught by Marcussen for a quick and accurate measurement of the bottles contents without moving the bottle to place it on a gauge. Since the scale of Carr starts with the bottom of the inside of the bottle and takes into account the thickness of the bottom of the bottle this would necessitate a gauge starting at the bottom of the bottle with the scale starting at the inside of the bottom of the bottle.

Marcussen also teaches using a device that is shaped the same as the bottle to be measured with a corresponding scale to determine the amount of liquid in the specially shaped bottle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of Carr shaped the same as the bottle to be measured with the corresponding scale as taught by Marcussen to determine the amount of liquid in the specially shaped bottle.

Duplication of existing parts is not considered patentably distinct. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a plurality of gauges of the combination of Carr and Marcussen for various bottles as a mere duplication of specific type of gauge.

4. Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Marcussen as applied to claims 1, 4, 5, and 8 above, and further in view of Hornig.

The device as claimed is disclosed by the combination of Carr and Marcussen together as stated in the rejection recited above for claims 1, 4, 5, and 8, but lacks a second scale on the

opposite edge of the device. Hornig teaches using a second scale on the opposite edge from a first scale to save room by having two useful scale on one device instead of having two separate devices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place a second scale with a second shaped edge for a second standard bottle on a second edge of the device of the combination of Carr and Marcussen together as taught by Hornig to have a second useful scale on the opposite side of the first scale to save room by having two scales on one device instead of having two devices.

5. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Marussen as applied to claims 1, 4, 5, and 8 above, and further in view of McDermott.

The device as claimed is disclosed by the combination of Carr and Marcussen as stated in the rejection recited above for claims 1, 4, 5, and 8, but lacks a display area a the top of the device. McDermott teaches using a display area on the top of a measuring device to indicate what the device is for or for advertising purposes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a display area at the top of the device of the combination of Carr and Marcussen together as taught by McDermott to indicate what the scale is for or for advertising purposes.

Response to Arguments

6. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection. The argument that the base reference of Carr does not teach a gauge that has a bottom that corresponds to the bottom of the bottle is not persuasive because Carr does disclose the concept of starting the scale at the bottom of the inside of the

bottle by taking into account the thickness of the bottles bottom and when taken in combination with the teaching reference of Marcussen as stated in the rejections recited above produce the claimed device.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (703) 308-3389. The examiner can normally be reached on M,T,Th,F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers

for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Christopher W. Fulton
Primary Examiner
Art Unit 2859

CWF
December 27, 2002